

FARMINGTON CITY PLANNING COMMISSION

Tuesday, July 20, 2004

PLANNING COMMISSION REGULAR SESSION

Present: Chairman Cory Ritz, Commission Members Bart Hill, Keith Klundt, John Montgomery, Cindy Roybal, and Jim Talbot, City Planner David Petersen, and Deputy City Recorder Jeane Chipman. Commission Member Jordan White was excused.

Chairman Ritz called the meeting to order at 7:00 P.M. **Keith Klundt** offered the invocation.

ADJOURNMENT INTO CLOSED SESSION

Jim Talbot moved that the Planning Commission adjourn into closed session as allowed by law to discussion information from the City's Attorney regarding possible pending litigation. **Keith Klundt** seconded the motion, which passed by unanimous vote. The Planning Commission adjourned to closed session at 7:10 P.M.

RECONVENE

John Montgomery moved that the Planning Commission reconvene at 7:30 P.M. **Bart Hill** seconded the motion, which passed by unanimous vote.

APPROVAL OF MINUTES

Mr. Petersen explained a new procedure for the Planning Commission meetings. After discussion and suggestions by Commission members there will now be comment cards and sign in sheets for those who wish to make public comments during the meetings. Comment cards will be available for those who wish to give written input. The written input will be given the Planning Commission Chairman to be read into the minutes. Regarding public comment, the Chairman will call on those in turn who have signed the sheet available at the back of the room.

Bart Hill moved that the Planning Commission delay consideration of the July 13, 2004, Planning Commission Meeting minutes and the June 24, 2004, Planning Commission Meeting minutes until the next Planning Commission meeting. **Cindy Roybal** seconded the motion, which passed by unanimous vote.

PUBLIC HEARING: CLARK JENKINS REQUEST FOR CONSIDERATION OF A MODIFICATION OR REVOCATION OF A CONDITIONAL USE PERMIT ISSUED

**FOR THE FARMINGTON STATION CONDOMINIUMS LOCATED AT
APPROXIMATELY 153 EAST 200 SOUTH (C-2-96) (Agenda Item #2)**

Background Information

The Planning Commission granted conditional use approval for the Farmington Station Condominium project on May 9, 1996, and November 14, 1996. The Conditional Use Permit was issued on June 2, 1997. During the last several months the City has received complaints about drainage and other items related to the project. City officials inspected the property in March of 2004, and a few days thereafter a walk through of the project was conducted on March 30th, which involved representatives from City staff, John Montgomery of the Planning Commission, the Developer and his engineer, and homeowners including member of the Owners Association. A summary of the walk through is as follows:

◆ Street

The street providing access to the project is a private right-of-way and had experienced some wear and tear. When asked if the City would accept such wear and tear on a public right-of-way, the response from the City Engineer was that this was normal wear and tear. Nevertheless, the maintenance of the street is a private matter and does not involve the City.

◆ Stucco

- Complaints were received about the stucco.
- The City Building Inspector made it clear that the City does not inspect stucco.
- However, there must be a 6" distance between the finish grade and frost plat below the stucco. Some buildings met this standards, some did not.
- The Developer stated that some property owners brought in dirt after final inspections thereby raising the grade and reducing the 6" distance.
- The Building Inspector reviewed inspection slips. Some units regarding this matter were "finaled" out and 2 or 3 were not.
- The Developer said that he would fix some and others he would not.

◆ Grading and Drainage

The City Engineer questioned if all areas covered by a sump are flat.

The Developer did not follow the grading and drainage plan approved for the project, especially on the east side where homeowners desired to have walk-out basements. John Montgomery stated that the grading plan was an issue for him and discussed the following issues with the developer:

- He must be satisfied with the updated grading and drainage plan, particularly on the east side.
- Show differences between the two plans (approved and existing).

- Demonstrate that the back yards drain properly.
- A professional should prepare a plan and/or recommendations with input from the developer and homeowners. It is very desirable if the developer and homeowners are confident that the plan will work.
- The west side is not a major issue, unless property owners adjacent to that side feel otherwise.
- Any grading plan should address and take care of the gap between the fence and the top of the retaining wall on the east side.
- The grading plan should address the stucco/mold issue, this should be in the Planning Commission motion.

◆ Fence

Issues regarding the fence around the project were discussed in depth. The gap between the fence and finish grade may be an issue. Property owners were concerned that the fence was not placed on the property line. The location of the fence (i.e., on the property line or off the property line) is a private matter. The fence must be at least 6' feet in height but no higher than 8'.

◆ Temporary Occupancy

Temporary occupancy permits were issued for units 6,7, 8, 11, 13, and 14. Each of these have conditions which must be completed in order to receive final occupancy. This should be completed as soon as possible.

◆ Retaining Wall

The retaining wall along the east property line is over 4 feet in height and must be "engineered" in a manner acceptable to the City.

END OF PACKET MATERIALS.

Mr. Petersen introduced the agenda item. The developer had not followed the grading and drainage plan originally approved by the City. The Farmington Station Owners' Association expressed concern about the wear and tear of the street. The City Engineer indicated the wear and tear was normal and that the matter was between private parties since the street had not been dedicated to the City. Stucco was also a concern. Mr. Petersen stated there must be a 6" distance between the finish grade and frost plat below the stucco. Some buildings met this standards, some did not. The developer said he would fix some but not others. Drainage problems had developed because of the changes made by the developer. Mr. Petersen reviewed several items as presented in the staff report contained in the packet material, including complaints regarding the fence. He stated fencing was a private issue, and that the City should not become involved.

Paul Hirst indicated concerns regarding drainage. Sump pumps do not do the job needed even at full capacity. He recommended a pipe be installed on the east side of the project and connected to the City drainage system; also that a pump be placed at the end of the property so

that the water would be forced into the City system. On the west side, the drainage was problematic. There did not seem to be an adequate drainage system in place. Mr. Hirst recommended there be a way to conduct the water from the low point on the west side out to the City system. He could not give information regarding the drainage on that side because no information was available.

Public Hearing

Chairman Ritz opened the meeting to a public hearing. He invited Clark Jenkins to address the Commission

Travis Jenkins represented the developer, Clark Jenkins. Mr. Jenkins reviewed the issue regarding the east side and said the developer would install a pipe and by-pass the sumps. There had never been a threat to the buildings even through the storms recently experienced. The west side drains were installed by the home owners. They had since been removed. Roof water had not been piped. There was a fence line agreement being drawn up by an attorney which would be presented to home owners. Mr. Jenkins said he proposed lowering the fence to negate the owner's concern. There was no longer any sloughing from the neighbor's property. He said he would consider building a retaining wall behind the fence to retain the dirt.

Peter Stevens (153 East 200 South, #7) represented the Farmington Station Home Owners' Association. He felt City Staff had done a good job in presenting the problems. He felt the developer had ignored the plan originally presented to the City for approval. The backyards on the east side are always wet. There had been significant problems with mold. Mr. Stevens suggested that a cash bond be set at double or triple what may be needed. He felt the developer was one who has made promises but had not followed through with the work needed. Mr. Stevens stated that the project was experiencing drainage from adjacent property that was not being resolved on site. The French drains being used on the project were not working. He also felt that the City should become involved with the fence issue. He was emphatic that Mr. Jenkins should be supervised under the most stringent manner.

Harold Manning (120 South 100 East) owned property on the west side of the complex. He said he saw the French drain installed on the west side of the development. He explained the slope of the grade and where the low spot was located. He did not believe the French drain was working at all. He explained that he had water coming onto his property from the development.

Public Hearing Closed

With no further comments, **Chairman Ritz** closed the public hearing.

Regarding the west side, **Mr. Petersen** stated that according to documents dated January 15, 1996, runoff should have been kept on site and discharged on to 200 South. However, a French drain was acceptable during site plan approval.

Mr. Montgomery stated the east side had a lower grade than what had originally been intended. It cut into the neighbor's property, and ground would be sloughing in time. It should be retained. On the west, the drainage could be controlled by appropriate drains. It was unclear

whether or not top soil had been brought in by current property owners. A pipe needed to go in deep enough for the drainage to be controlled even if the grading was lowered to eliminate the stucco problem. The drainage needed to be diverted to the street and the City's drainage system. Mr. Montgomery suggested that the berm on the original plan should be placed on the west side of the project. None of the drainage will flow to the street by gravity. The bonding should be 150% of the estimated cost.

Mr. Petersen stated that some of the properties only had temporary occupancy permits. He felt that all the problems regarding those permits were resolvable. Solutions should be reviewed by the City Engineer who could inspect the problems on site and find the best techniques for each of the drainage problems.

Charles Baroni (maintenance manager) stated that the mold issues could be resolved fairly easily.

Mr. Petersen stated that as a matter of policy the City Engineer provided a cost estimate for all bonds. Thereafter, the City increases the bond amount by 20 percent.

Mr. Talbot was curious about why most of the issues had not been caught at the time of City inspection.

Mr. Petersen stated that the City's inspection process had been changed and intensified in recent years. In 1996, inspection was not as detailed, especially in regards to drainage.

Mr. Montgomery stated that the developer did lower one of the basements at the request of one of the property owners. Doing so lowered the entire project and caused some of the drainage problems.

Ms. Roybal felt the issues should be resolved during the current meeting to eliminate the need for litigation.

Mr. Hirst stated a berm on the west side would protect the property owners to the west of the project. He felt the buildings were not threatened on the west side. He suggested that berming on the west side be mounded so that it kept runoff from going from unit to unit and to properties to the west.

Motion

John Montgomery moved that the Planning Commission grant approval to modify the conditional use permit for the Farmington Station Condominium project (C-2-96) as follows:

1. The developer shall prepare a grading and drainage plan for review and approval by the City to include but not be limited to the following:

- a. The plan must follow the recommendations of the city Engineer dated July 7, 2004.
- a. The grading plan must identify all retaining walls and the City shall receive acceptable documentation from a geo-technical engineer that all existing retaining walls over 4 feet in height were constructed in a safe manner and meet all appropriate engineering standards.
- a. The developer must resolve the issue related to the gap between the fence on the east side of the project and the finish grade. Part of the solution may include but not be limited to 1) providing additional fence material in the gap, 2) more landscaping, or 3) if an acceptable recommendation is received from the geo-technical engineer, the retaining wall along the east property line may be built higher to reduce the gap between the fence and the finish grade.
- a. The developer must resolve the issue of dirt sloughing off from adjacent properties on the east side against the fence and/or under and through the gap into the project area. A retention wall shall be constructed as per specifications acceptable to the City Engineer.
- a. The developer shall resolve drainage problems on the west side in a manner acceptable to the City Engineer as per the letter dated July 7, 2004.
- a. The developer shall resolve problems regarding parking lot drainage puddling on the north in a manner acceptable to the City Engineer.
1. A landscape plan consistent with requirements of Chapter 7 of the zoning Ordinance shall be prepared by the Developer.
2. The Developer and homeowners must work with the Building inspector to resolve all conditions of temporary occupancy for any unit within the project by September 15, 2004.
4. The final grading and drainage plan, which shall meet all the requirements of the City Engineer, and a landscaping plan, must be presented to the City on August 26, 2004, for final consideration by the Planning Commission at their next Planning Commission meeting.
5. The City Engineer shall develop a cost estimate for all additional (or modified) grading and drainage improvements as set forth on the approved drainage and grading plan for the project. Thereafter the Developer shall post a cash bond with the City to ensure that the improvements are implemented in a manner acceptable to the City.

Jim Talbot seconded the motion, which passed by unanimous vote.

Findings

1. The motion brings the Farmington Station project into compliance with Farmington City ordinances.
1. The action helped to resolve disputes between property owners and the developer.
1. The action helped to set appropriate precedence for future development.

AGENDA AMENDMENT

Motion

Jim Talbot moved that the Planning Commission defer consideration of Agenda Item #3 until Mr. Buie could be present and that the Commission hear Agenda Item #4 and following items prior to consideration of Agenda Item #3. Agenda Item #3 shall be heard during the current Planning Commission meeting. **John Montgomery** seconded the motion. The motion passed by a unanimous vote.

PUBLIC HEARING: FARMINGTON CITY REQUEST FOR A RECOMMENDATION TO THE CITY COUNCIL TO AMEND THE SUBDIVISION ORDINANCE REGARDING STREET CROSS SECTION STANDARDS (ZT-3-04) (Agenda Item #4)

Mr. Petersen very briefly reviewed the agenda item, stating the action was a house-keeping item to update ordinance requirements.

Public Hearing

Chairman Ritz opened the meeting a public hearing.

Public Hearing Closed

With no forthcoming comments, **the Chairman** closed the public hearing.

Motion

Bart Hill moved that the Planning Commission recommend that the City Council amend the Subdivision Ordinance regarding street cross section standards as presented. **Keith Klundt** seconded the motion. The motion passed by unanimous vote.

Findings

The motion was consistent with the Farmington City General Plan, including the Master Transportation Plan.

TRANSPORTATION ORIENTED DEVELOPMENT (TOD)/FIRST READING (ZT-5-02) Agenda Item #5)

Mr. Petersen stated there had been a committee meeting regarding the Transportation Oriented Development (TOD). The Planning Commission needed to review the document included in the packet in anticipation of consideration at their first meeting in August.

Rich Haws addressed the Planning Commission members. He reviewed in general terms a site plan for the suggested project in west Farmington.

CITY COUNCIL REPORT AND MISCELLANEOUS

Mr. Petersen asked that members of the Commission sign and submit the statements of disclosure given them during the meeting.

Mr. Petersen reported there would be a Certified Citizen Planner Seminar held on three different dates described in the packet. He told Commission members the seminar had been very valuable in the past and that the City would pay for the seminar fee if Commission members would like to attend.

Chairman Ritz asked that the record state public appreciation for the hard work and devoted service of Commission Member White. Mr. White had been a great addition to the Commission and his presence would be missed. In consensus with the other Commission members, Chairman Ritz directed that Staff prepare a letter of appreciation for Mr. White to be signed by all the Commission members.

R.K BUIE CO., COWBOY PARTNERS, AND GARBETT HOMES REQUEST FOR CONDITIONAL USE APPROVAL FOR A MULTIPLE FAMILY RESIDENTIAL DEVELOPMENT CONSISTING OF 161 CONDOMINIUMS ON 11.437 ARES LOCATED AT APPROXIMATELY 850 NORTH SHEPARD CREEK PARKWAY IN A C ZONE (C-11-04) (Agenda Item #3)

Mr. Petersen introduced the agenda item. The item had been tabled until an opinion could be obtained from the City Attorney. Interested parties had been involved in a great deal of negotiation during the week. Mr. Mazaran (the City's Attorney) had been placed in an untenable position when asked to relay information between disagreeing parties. He had called a meeting to hear all parties. The meeting took place on Monday, July 19, 2004, at 2:30 P.M. The meeting lasted for several hours. After City officials left the meeting, the other parties agreed to elements of a proposed agreement. However, the Estates at Shepard Creek needed a vote of their membership before they could officially agree. Mr. Petersen reviewed conditions by which the City may approve the request by Mr. Buie. Site plan approval could be considered after, among other things, engineering had been completed and submitted to the City.

Chairman Ritz stated the Planning Commission was considering only conditional use permit and not site plan approval at this point.

Members of the Planning Commission expressed a desire to include the agreement discussed by some of the parties on July 19th as a conditional of approval.

Mr. Petersen stated that this was not necessary as the agreement was being signed by the parties involved.

Jim Talbot stated the Planning Commission was keenly aware of pros and cons of each of the different issues involved. Comments during the meeting could be restricted to only new issues and clarification of items under consideration.

Bruce Richards (1184 North 1500 West) stated he was the legal representative of the Homes at Shepard Creek HOA. He wanted to present additional information about the agreement. The issue of consent was pertinent to the Planning Commission decision. Phase I of the project was being considered during the current Planning Commission meeting. The agreement stated that there would be consent according to the agreement given by the Homes at Shepard Creek and the Estates at Shepard Creek, however if the Estates elected not to grant approval, then the project would still go through without them. A consent of approval included residential units for sale in Phase I provided the density was 14 units per acre or less. Mr. Richards stated that the agreement resolved the consent issue and avoided litigation. Mr. Richards felt the agreement should be part of the conditions of approval by the Planning Commission.

Kent Buie stated he felt the afore mentioned description was a fair characterization of the situation. He expressed his approval of the agreement and wanted the project to move forward.

Chairman Ritz commended all parties involved for their efforts in coming to a compromise agreement.

Mr. Montgomery stated he still felt some concern regarding the density of the project. He asked if the HOAs involved were happy with the density cap of 14 units per acre, to which Mr. Richards responded in the affirmative. Mr. Montgomery stated there would likely be a higher level of cooperation and trust engendered because of the cooperation of recent negotiations.

Bart Hill stated he felt the citizens and developer had come to a workable agreement that should be approved by the City.

Cindy Roybal expressed great satisfaction in the resolution. She appreciated the efforts of both the developer and the citizens involved. Ms. Roybal felt the finalization of the agreement by the signatures of all involved parties should be a condition of granting the conditional use permit. She wanted to clarify that there would be no rental units in the project, to which Mr. Buie responded in the affirmative. If rental units are a part of any future proposal, a new consent must be granted.

Mr. Petersen reported that the agreement will run with the land. However, the agreement and previous agreements will expire on October 16, 2009. He stated that the City Attorney had not given an opinion on whether or not the property owners actually have right of consent.

However, this recent agreement brought the parties together to agree on the current project. The City and Mr. Buie agreed that the Homes at Shepard Creek and the Estates at Shepard Creek will be asked for consent on this and future phases of development.

Motion

Cindy Roybal moved that the Planning Commission grant conditional use approval residential development consisting of 161 condominiums on 11.437 acres located at approximately 850 North Shepard Creek Parkway in a C zone (application C-11-04, Phase I only) subject to the following:

1. The density for development shall not exceed 14 units per acre.
1. Condominiums shall be limited to “For Sale” or owner occupied dwelling units. No rental dwelling units shall be permitted.
1. Receipt, by the City, of a response from the Estates at Shepard Creek HOA by Thursday, July 22, 2004, at 10:00 P.M.
1. Review and approval by the City of the development plan subject to all provisions set forth in Chapter 7 of the Zoning Ordinance including, but not limited to, resolution of traffic impact concerns, and subject to provisions of the Farmington City Code. A conditional use permit shall not be issued until the site plan has been approved by Farmington City. Conditions of the site plan may be conditions of a conditional use permit.
1. The agreement discussed in the Planning Commission meeting July 20, 2004, shall be signed by all the parties involved.

John Montgomery seconded the motion. The motion passed by unanimous vote.

Findings

- I. The action concluded a very long and arduous process for all parties and resolved issues by compromise between all parties involved.
- I. The approval was consistent with the General Plan for the U.S. 89 Highway corridor.

ADJOURNMENT

Jim Talbot moved to adjourn at 9:35 P.M.

Cory Ritz, Chairman
Farmington City Planning Commission